IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 18TH JULY 2007 / 27TH ASHADHA 1929

RPFC.No. 253 of 2007()

AGAINST THE ORDER DATED 20/07/2006 IN OP. 300 /2004 IN MC.265/2004 of THE FAMILY COURT, KOZHIKODE

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REVISION PETITIONER/PETITIONER:

K. RANI, D/O. KUNJAN,
MANISHA MANZIL, P.O. CHALAPPURAM, KOZHIKODE.

BY ADV. SMT.T.RESMI DAMODARAN

RESPONDENTS: RESPONDENT:

P. SATHEESH, S/O. C.K.KUMARAN,
JANUBHAVANAM, AYILOTHKANDY PARAMBA,
VALAYANAD AMSOM, DESOM, KOZHIKODE.

BY ADV. SRI.SANTHARAM.P

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON 10/07/2007, THE COURT ON 18/07/2007 PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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R.P.F.C. NO. 253 of 2007

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DATED: 18-07-2007

O R D E R

The revision petitioner who is the wife of the respondent challenges the order dated 20-7-2006 passed by the Family Court, Kozhikode dismissing her application for maintenance. she claimed a monthly maintenance at the rate of of Rs. 2,000/- on the allegation that the respondent is getting Rs. 7,500/- from his job and Rs. 5,000/- as income from his landed property.

2. The claim for maintenance was opposed by the respondent contending inter alia that his monthly income from employment was only Rs. 1,877/- and he was only a co-owner along with his sister over 3.84 cents of land. He further contended that the revision petitioner/wife was getting Rs. 1,500/- per month from tailoring works and Rs. 1,500/- from chitty business. According to the respondent/husband, the revision petitioner was unjustifiably staying away from him and claiming separate maintenance and that he was entitled to a decree for restitution of conjugal rights in O.P. 300 of 2004 filed by

him.

3. The Family court was of the view that she was getting a rental income of Rs. 600/- per month under Ext.A1 sub lease and that she had also collected Rs. 15,000/- by way of security under Ext.A1 release deed and further that she was promptly remitting the premium for three L.I.C. policies evidenced by Ext.A2 series besides doing chitty business under Kudumbasree. On this view, the Family court came to the conclusion that it cannot be said that the revision petitioner is unable to maintain herself within the meaning of Sec. 125 Cr.P.C. and accordingly maintenance was refused to her.

4. Even though the learned counsel appearing for the respondent attempted to sustain the impugned order, I am afraid that I cannot agree with the conclusions reached by the Family Court.

5. The marriage between the revision petitioner and the respondent was admittedly solemnized on 28-9-1997 in accordance with the Hindu customary rites. The respondent/ husband left the matrimonial home on 15-2-2004. He filed O.P. 300 of 2004 before the Family Court seeking restitution of conjugal rights. On 12-12-2005, the revision petitioner filed M.C. 265 of 2004 seeking maintenance at the rate of Rs. 2000/- per month. Both the petition for restitution of conjugal rights and the application

for maintenance were jointly tried and disposed of by a common order dated 20-7-2006. The Family Court dismissed O.P. 300 of 2004 holding that the wife was not unjustifiably staying away from her husband. If so, she would be entitled to claim separate maintenance provided that she is unable to maintain herself.

6. In an application for maintenance under Sec. 125 Cr.P.C. the applicant need only allege that she is unable to maintain herself and that the respondent who has sufficient means has neglected to maintain the applicant. The initial burden is certainly on the applicant to prove the means of the respondent and his failure to maintain the applicant who is unable to maintain herself. The respondent husband in this case is engaged in the distribution of newspapers in Calicut City. He is also doing the work of getting cinema tickets stamped. Even though the revision petitioner alleged that the respondent/husband is getting a monthly income of Rs. 7,500/- from his job and Rs. 5,000/- from his landed property, on his own admission he was getting Rs. 1,877/- per month from his job and was a co-owner in respect of 3.84 cents of land along with his sister. Maintenance was disallowed to the wife by the Family Court on the view that she was getting Rs. 600/- per month by way of rental income under Ext.A1 lease deed and that she was having income from other sources such as chitty

business run by Kudumbasree and further that she was also paying the premium in respect of three insurance policies.

7. The Court below was factually wrong in observing in paragraph 12 of the impugned order that the revision petitioner was getting Rs. 600/- under Ext.A1 lease deed and she received Rs. 15,000/- by way of security. In fact, in paragraph 12 of O.P.300 of 2004 filed by the respondent/husband he had admitted that the revision petitioner was getting only Rs. 200/- under Ext.A1 transaction which is really a sub lease. As per the sub lease, out of the Rs. 600/- rupees fixed as rent Rs. 400/- is to be paid by her to the ultimate landlord. This was lost sight of by the court below. With regard to the security deposit of Rs. 15,000/-, it cannot treated as income since it is an amount which is liable to be refunded to the sub lessee at the time of vacating the premises. As for the other sources of income, there was absolutely no evidence except the self serving allegation made by the husband that she was subscribing to a chitty transaction run by the Kudumbasree and was also paying the insurance premium. Exts. A2 to A3 are only status reports with regard to three insurance policies. There is no evidence before the court regarding the income from chitty transactions. It is reasonable to infer that as a prudent lady she might be

remitting whatever precious little she could earn in a kuri run by the local womenfolk. From that alone it cannot be inferred that she has fabulous income . The conclusion reached by the Judge of the Family Court cannot, therefore, be sustained and is accordingly set aside. M.C. 265/04 will stand allowed in part directing the respondent/husband to pay maintenance to the revision petitioner/wife at the rate of Rs. 800/- (Rupees eight hundred only per month from the date filing M.C. 265 of 2004. The respondent shall deposit the arrears of maintenance up to July 2007 in the Family court within two months from today. He shall continue to pay the future maintenance at the rate of Rs. 800/- (Rupees eight hundred only) per month on or before 12th of every month. The revision petitioner shall be entitled to withdraw the amounts as and when they are deposited.

In the result, this Revision Petition is allowed as above.

V. RAMKUMAR, JUDGE.

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